

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

DEBRA PETERSON,	)	
	)	
Claimant,	)	<b>IC 2005-501385</b>
v.	)	
	)	
JEWEL’S HOME CARE SERVICES, INC.,	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSION OF LAW,</b>
Employer,	)	<b>AND RECOMMENDATION</b>
and	)	
	)	
IDAHO STATE INSURANCE FUND,	)	FILED APR 24 2007
	)	
Surety,	)	
Defendants.	)	
	)	

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**INTRODUCTION**

The Idaho Industrial Commission assigned this matter to Referee Douglas A. Donohue. He conducted a hearing in Idaho Falls on June 13, 2006. Dennis R. Petersen represented Claimant. Russell E. Webb represented Defendants. The parties presented oral and documentary evidence. They took post-hearing depositions and submitted briefs. The case came under advisement on January 9, 2007. It is now ready for decision.

**ISSUES**

After due notice, the parties at the time of hearing stipulated to reduce the issues to the following single issue:

1. Whether Claimant suffered a compensable accident arising out of and in the course of employment, without regard for whether an injury resulted therefrom.

All other issues were reserved.

**FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION - 1**

## **CONTENTIONS OF THE PARTIES**

Claimant contends she suffered a compensable accident at work.

Defendants contend Claimant did not suffer an accident. Alternatively, if she did, it occurred outside the course and scope of her employment. They question Claimant's credibility in describing the "accident."

## **EVIDENCE CONSIDERED**

The record in the instant case consists of the following:

1. Hearing testimony of Claimant and her supervisor Joya Lovell;
2. Claimant's Exhibits 1 – 11, 13 – 16; and
3. Defendants' Exhibits A – Z.

After considering the record and briefs of the parties, the Referee submits the following findings of fact, conclusion of law, and recommendation for review by the Commission.

## **FINDINGS OF FACT**

1. Claimant worked as a home health care aide for Employer from December 1999 to January 2005.
2. On January 5, 2005, after shoveling snow from a client's front sidewalk, Claimant lifted a bag of rock salt while preparing to sprinkle the sidewalk.
3. Because of the weight of the bag, Claimant lost her balance. She wrenched her back and felt immediate back pain.
4. Claimant, through her husband, reported the accident to Employer by telephone the following morning when she was unable to work. Claimant filed a written notice of injury on January 10, 2005.

5. Claimant never worked for Employer again. Employer fired Claimant for attempting to provide the client a service which was not on Claimant's authorized list of duties and for having other minor work injuries in the past.

### **DISCUSSION AND FURTHER FINDINGS OF FACT**

6. **Accident.** A claimant bears the burden of proving a compensable accident occurred. Painter v. Potlatch Corp., 138 Idaho 309, 63 P.3d 435 (2003).

7. Here, Claimant testified about an event in which she lifted a bag of rock salt and felt back pain. That testimony was consistent with Claimant's initial reports to Employer and to her doctors. Claimant's testimony is credible. Her demeanor and the quality of her testimony allowed the Referee to place great weight upon her testimony.

8. The Referee also observed and assessed the demeanor and testimony of Claimant's supervisor. Ms. Lovell's testimony appeared calculating and carefully designed to avoid potential admissions. She lacked the demeanor of a forthright witness. When asked to testify about certain facts within her knowledge, she sometimes answered by stating company policy rather than testifying about what actually happened. By demeanor and by substance, Ms. Lovell's testimony receives less weight than Claimant's.

9. Because of health problems, the client's deposition was taken in lieu of live testimony. Thus, the Referee had no opportunity to assess the demeanor of this elderly woman.

10. Claimant described a specific mishap, reasonably located in place and time. Employer picked at perceived inconsistencies in Claimant's testimony, minor in nature, and asserted Claimant was lying. Employer's assertion is not supported by the record.

11. **Course and Scope.** To be compensable an injury must have been "caused by an accident arising out of and in the course of" employment. Idaho Code § 72-102(18)(a).

### **FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION - 3**

To determine whether an accident “arising out of and in the course of” employment occurred, one must examine the time, place and circumstances under which the accident occurred. Kessler v. Payette County, 129 Idaho 855, 859, 934 P.2d 28, 32 (1997). Where it is probable the accident in question arose out of and in the course of employment, the matter will be resolved in favor of the worker. *See*, Dinius v. Loving Care and More, Inc., 133 Idaho 572, 573, 990 P.2d 738, 739 (1999).

12. Claimant persuasively asserts the facts surrounding the time, place and circumstance of her back injury do not constitute a personal deviation from her duties as a home health care aide. Providing physical assistance for the safety and welfare of a client was a core function of her job. Indeed, some clients themselves had to be lifted for their personal care needs. Claimant lifted the bag of salt in furtherance of her duty of providing physical assistance. Both the client and Employer benefited by Claimant’s willingness to perform a reasonable task requested by the client.

13. Employer’s handbook expresses disapproval about shoveling snow. Claimant did not injure herself shoveling snow, she injured herself lifting a bag of salt. Moreover, Employer’s handbook cannot relieve Defendants from liability under Idaho Workers’ Compensation Law. An Employer is prohibited by statute from contracting away an employee’s rights under Idaho Workers’ Compensation Law. Idaho Code § 72-318. Furthermore, injuries incurred while performing work duties, even if the duties are performed in an unauthorized manner, may be compensable. *See*, Gage v. Express Personnel, 135 Idaho 250, 16 P.3d 926 (2000).

## CONCLUSION OF LAW

Claimant suffered a compensable accident arising out of and in the course of her work for Employer.

## RECOMMENDATION

The Referee recommends that the Commission adopt the foregoing Findings of Fact and Conclusion of Law as its own and issue an appropriate final order.

DATED this 14<sup>TH</sup> day of March, 2007.

INDUSTRIAL COMMISSION

/S/\_\_\_\_\_  
Douglas A. Donohue, Referee

ATTEST:

/S/\_\_\_\_\_  
Assistant Commission Secretary

## CERTIFICATE OF SERVICE

I hereby certify that on the 24<sup>TH</sup> day of APRIL, 2007, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

Dennis R. Petersen  
P.O. Box 1645  
Idaho Falls, ID 83403-1645

Russell E. Webb  
P.O. Box 51536  
Idaho Falls, ID 83405

db

/S/\_\_\_\_\_

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Claimant,	)	<b>IC 2005-501385</b>
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JEWEL'S HOME CARE SERVICES, INC.,	)	<b>ORDER</b>
	)	
Employer,	)	
and	)	
	)	<b>FILED APR 24 2007</b>
IDAHO STATE INSURANCE FUND,	)	
	)	
Surety,	)	
Defendants.	)	
_____	)	

Pursuant to Idaho Code § 72-717, Referee Douglas A. Donohue submitted the record in the above-entitled matter, together with his proposed findings of fact and conclusion of law to the members of the Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusion of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant suffered a compensable accident arising out of and in the course of her work for Employer.
2. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all issue adjudicated.

DATED this 24<sup>TH</sup> day of APRIL , 2007.

INDUSTRIAL COMMISSION

/S/ \_\_\_\_\_  
James F. Kile, Chairman

/S/ \_\_\_\_\_  
R. D. Maynard, Commissioner

/S/ \_\_\_\_\_  
Thomas E. Limbaugh, Commissioner

ATTEST:

/S/\_\_\_\_\_  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on 24<sup>TH</sup> day of APRIL , 2007, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

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